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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

M. HOPE YOUNG,  
 Plaintiff,  
 v.  
 ALPHONSO JACKSON, SECRETARY OF  
 THE DEPARTMENT OF HOUSING AND  
 URBAN DEVELOPMENT; FAYE  
 AUSTIN; MARC ROTHBERG; AND  
 GEORGE WEIDENFELLER,  
 Defendants.

No. C 07-2413 JSW

**FURTHER JOINT CASE  
 MANAGEMENT STATEMENT AND  
 PROPOSED ORDER**

Date: May 9, 2008  
 Time: 1:30 p.m.  
 Place: Courtroom 2, 17<sup>th</sup> Floor  
 450 Golden Gate Avenue  
 San Francisco, CA  
 Judge: Hon. Jeffrey S. White

1 According to Northern District Civil Local Rule 16-9, requiring counsel to file a Joint Case  
2 Management Statement addressing all of the topics set forth in the Standing Order for All Judges  
3 of the Northern District of California – Contents of Joint Case Management Statement, dated  
4 March 1, 2007, the parties through their counsel of record file the following Joint Case  
5 Management Statement:

6 The parties' prior Joint Case Management Conference was filed in December 2007. If the  
7 parties have amended that prior statement, the statement below indicates the changes in  
8 underlined italics for ease of reference.

9 1. Jurisdiction and Service *No change from prior statement*

10 The Court has jurisdiction under Title VII of the Civil Rights Act of 1964. The parties are  
11 plaintiff M. Hope Young and defendant Secretary of Housing and Urban Development. The  
12 defendant has been served.

13 2. Relevant Facts *No change from prior statement*

14 Plaintiff: Plaintiff M. Hope Young has been employed as an attorney in the Office of  
15 Counsel of the Dept. of Housing and Urban Development since 1992, specializing in fair  
16 housing. She is currently employed as an Attorney/GS-14. In March 2004, Regional Counsel  
17 Faye Austin and Deputy General Counsel George Weidenfeller made a decision to fill a  
18 supervisory position through a voluntary reassignment process, bypassing the requirements of a  
19 vacancy announcement and the normal promotional process. Plaintiff contends that this decision  
20 was made to preclude her from being considered for this promotional opportunity based upon her  
21 race (African-American) and gender (female), and that the reassignment selection process was  
22 used to ensure the selection and subsequent promotion of Marc Rothberg, a Caucasian male.

23 On May 11, 2004, Ms. Young filed a formal EEO Complaint of Discrimination. She  
24 amended her initial EEO Complaint on October 7, 2004. Immediately following the filing of this  
25 Complaint, Ms. Young alleges that Messrs. Rothberg and Weidenfeller and Ms. Austin engaged  
26 in a course of conduct intended to harass and intimidate Ms. Young, and created a hostile work  
27 environment for her in retaliation for her EEO complaint. Ms. Young alleges that since May  
28 2004 up until the present day, supervisors Rothberg and Austin have, *inter alia*, falsely accused

1 her of (a) failing to perform assignments, (b) neglecting her duties and (c) arriving late to work;  
2 hired and instructed her co-workers to spy on her; unfairly placed on a Performance Improvement  
3 Plan; denied her the benefits of long-accepted attendance practices with respect to teleworking,  
4 bereavement leave, and participation in HUD's credit-hour program; set timelines and deadlines  
5 that were unreasonable or impossible for her to meet or comply with; began to monitor her daily  
6 arrival and departure times at work; and singled her out for punishment while ignoring the late  
7 arrival and early departure times of other similarly situated employees, including attorney Kim  
8 Marlia, a Caucasian male.

9 More recently, these supervisors have denied her requests for reasonable accommodation  
10 based upon her disability, subjected her to disciplinary actions, modified her work assignments,  
11 and issued her an unfavorable performance evaluation. On November 23, 2007, Ms. Young filed  
12 a subsequent EEO Complaint for disability discrimination which is pending. She intends to  
13 amend this action to include the claims arising from Defendant's continuing retaliation.

14 Defendant: This is an employment discrimination lawsuit filed by Melissa Hope Young, who  
15 is a GS-14 Attorney-Advisor in the Region IX Office of Counsel of the Department of Housing  
16 and Urban Development ("HUD") in San Francisco, California. Plaintiff named Alphonso  
17 Jackson, Secretary of HUD, in his official capacity. Plaintiff alleges that HUD discriminated  
18 against her due to her race (African-American) and her sex (female), and reprisal for prior equal  
19 employment opportunity activity. She alleges, inter alia: (1) she was passed over for a  
20 reassignment to a supervisory position in the Region IX office, (2) she was subsequently harassed  
21 and retaliated against for prior EEO activity when her supervisor i) suspended her participation in  
22 the Credit Hour Program, ii) disapproved various requests to work credit hours, iii) placed her on  
23 a Performance Improvement Plan, iv) accused her of failing to complete assignments timely, v)  
24 repeatedly accused her of tardiness, and vi) prohibited her from using bereavement leave.

25 Defendant denies there was any discrimination or retaliation against plaintiff.

26 Regarding the supervisory position, this was a voluntary reassignment, not an announced  
27 vacancy. Defendant considered but did not select plaintiff for the reassignment to the  
28 supervisory position because she was not the most experienced candidate, had a poor attendance

1 history, and was not complete in her work product.

2 Regarding plaintiff's credit hour program claim, defendant approved plaintiff's Credit Hour  
3 program requests when appropriate and warranted by her work load. At times, her requests were  
4 not warranted or appropriate and in those instances defendant did not approve plaintiff's request.

5 Regarding the performance improvement plan claim, defendant contends that it instituted a  
6 performance improvement plan because plaintiff's performance needed improvement. After  
7 plaintiff provided work status reports and prioritized her work load appropriately, and after  
8 weekly meetings with her supervisor to implement the plan, plaintiff's performance improved  
9 and she was removed from the PIP.

10 As for plaintiff's failure to complete assignments timely, this fact was documented and  
11 addressed in the performance improvement plan.

12 Regarding the tardiness claim, plaintiff has been habitually tardy in appearing to work during  
13 approved hours. This is documented and has been addressed directly with plaintiff.

14 Regarding plaintiff's bereavement leave claim, plaintiff provided a leave slip on March 3,  
15 2005 indicating one half hour of bereavement leave the previous day for "death in the family."  
16 Plaintiff's supervisor requested that she provide the required information, including the name and  
17 relationship of the family member. When plaintiff provided this information, within a few days,  
18 the supervisor approved the bereavement leave request.

19 3. Legal Issues No change from prior statement

20 Defendants:

- 21 a. Discrimination: Can plaintiff establish the prima facie elements of racial  
22 discrimination by showing disparate treatment, namely that she was "singled out  
23 and treated less favorably than others similarly situated on account of race or any  
24 other criterion impermissible under [Title VII]?" Gay v. Waiters' and Dairy  
25 Lunchmen's Union, Local No. 30, 694 F.2d 531, 537 (9th Cir. 1982); McDonnell  
26 Douglas Corp. v. Green, 411 U.S. 792, 802, 803 (1973).  
27 b. Discrimination: Can the defendant articulate a legitimate nondiscriminatory  
28 reason for the alleged adverse employment actions?

- 1 c. Discrimination: Once the defendant carries this burden, will plaintiff be able to  
 2 demonstrate that the “‘assigned reason’ was ‘a pretext or discriminatory in its  
 3 application.’ ” Lynn v. Regents of the Univ. of California, 656 F.2d 1337, 1341  
 4 (9th Cir. 1981) (quoting McDonnell Douglas Corp. v. Green, 411 U.S. 792, 807  
 5 (1973)).
- 6 d. Retaliation: Will plaintiff be able to carry her burden to show that: (1) she  
 7 engaged in a protected activity; (2) she suffered an adverse employment decision;  
 8 and (3) there was a causal link between the protected activity and the adverse  
 9 employment decision. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054,  
 10 1064 (9<sup>th</sup> Cir. 2002).
- 11 e. Retaliation: If the plaintiff establishes a prima facie case of retaliation, will  
 12 defendant be able to carry its burden to articulate a legitimate, non-retaliatory  
 13 explanation for the adverse employment action. See Winarto v. Toshiba America  
 14 Electronics Components, Inc., 274 F.3d 1276, 1284 (9<sup>th</sup> Cir. 2001).
- 15 f. Retaliation: If the employer rebuts the inference of retaliation, the burden shifts  
 16 back to the plaintiff to show that the defendant’s explanation is merely a pretext  
 17 for impermissible retaliation. See Brooks v. San Mateo, 229 F.3d 917, 928 (9<sup>th</sup>  
 18 Cir. 2000).
- 19 g. Nature and scope of damages, if any.

20 PLAINTIFF:

- 21 a. Whether Ms. Young’s race or gender activity was a motivating factor in  
 22 Defendant’s decision not to promote her in January 2004. (*Stegall v. Citadel Broadcasting Co.*,  
 23 350 F.3d 1061, 1067 (9<sup>th</sup> Cir. 2003), citing *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 856-57  
 24 (9th Cir. 2002), *affirmed*, *Desert Palace, Inc., v. Costa*, 539 U.S. 90, 123 S.Ct. 2148, 156  
 25 L.Ed.2d 84 (2003); *see also McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1122-1123 (9<sup>th</sup> Cir.  
 26 2004).)
- 27 b. Whether Ms. Young was targeted for discrimination or harassment because of her  
 28 membership in two protected groups: that of a racial minority and female. (*Lam v. University of*

1 *Hawaii*, 40 F.3d 1551, 1561-1562 (9<sup>th</sup> Cir. 1994).)

2 c. Whether Ms. Young was subjected to persistent and ongoing harassment that was  
3 sufficiently severe to change the terms and conditions of her employment. (*Meritor Sav. Bank v.*  
4 *Vinson* (1986) 477 U.S. 57, 66-67, 106 S.Ct. 2399, 2404-2405, 91 L.Ed.2d 49; *Draper v. Coeur*  
5 *Rochester, Inc.*, 147 F.3d 1104, 1107-1109 (9<sup>th</sup> Cir. 1998).)

6 d. Whether the cumulative effect of numerous discrete acts polluted Ms. Young's  
7 work environment and created a hostile work environment. (*Morgan v. Amtrak*, 232 F.3d 1008,  
8 1017 (9<sup>th</sup> Cir. 2000), *affirmed in part, reversed in part*; *National Passenger Railroad Corp. v.*  
9 *Morgan* (2002) 536 U.S. 101, 115, 122 S.Ct. 2061, 2072, 153 L.Ed.2d 106); *Porter v. CDC*, 419  
10 F.3d 885, 891 (9<sup>th</sup> Cir. 2005) (*as amended* August 5, 2005); *Oncale v. Sundowner Offshore*  
11 *Services, Inc.* (1998) 523 U.S. 75, 81-82, 118 S.Ct. 998, 1003, 140 L.Ed.2d 201).)

12 4. Motions No change from prior statement

13 Defendants: The parties anticipate that motions for summary judgment will be filed and  
14 hereby request a hearing date be assigned at this conference, if possible.

15 5. Amendment to the Pleadings No change from prior statement

16 Defendant: None anticipated.

17 Plaintiff: Plaintiff has additional claims for retaliation and other discriminatory acts that  
18 have occurred since the filing of this action. Subject to the exhaustion of any additional  
19 administrative requirements, plaintiff will seek leave to amend this complaint.

20 6. Evidence Preservation No change from prior statement

21 Defendants: The Federal Defendant has secured all e-mail activity on the HUD e-mail  
22 accounts of the following persons: defendants Weidenfeller, Austin, and Rothberg and plaintiff.  
23 Defendant requests that plaintiff take all appropriate measures to preserve evidence, including  
24 electronically stored data, exclusively within her possession, care, custody or control.

25 7. Disclosures

26 The parties have exchanged Rule 26 Initial Disclosures and provided supplemental  
27 information, as warranted, since the first case management conference.

28 8. Discovery

1 The parties have met and conferred and make the following proposal.

2 A) Depositions: Plaintiff believes she'll need to seek leave to take 20-25 depositions.

3 Defendant will seek leave to take 10 depositions. These will include:

- 4 1) Plaintiff – all aspects of the claims
- 5 2) Fernandez-Pifer, Rosemarie – HUD co-worker identified by plaintiff as  
6 having knowledge of discrimination against plaintiff in the 2004  
7 supervisor selection
- 8 3) Hill, Tyrone – – former HUD co-worker identified by plaintiff as having  
9 knowledge of discrimination against plaintiff in the 2004 supervisor  
10 selection, as well as additional instances of discrimination, retaliation, etc.
- 11 4) Kilibarda, Hana – former HUD co-worker identified by plaintiff as having  
12 knowledge of discrimination against plaintiff in the 2004 supervisor  
13 selection
- 14 5) Lee, Ji – HUD intern with knowledge of plaintiff's work place  
15 relationships in general and with Mr. Rothberg specifically including  
16 several episodes of alleged discrimination, etc.
- 17 6) Lui, Josephine – HUD paralegal with knowledge of plaintiff's work place  
18 relationships in general and with Mr. Rothberg specifically including  
19 several episodes of alleged discrimination, etc. and plaintiff's attendance  
20 patterns
- 21 7) Marlia, Kim – HUD attorney and co-worker with knowledge of plaintiff's  
22 claims generally and knowledge of plaintiff's attendance and related  
23 performance and disciplinary issues
- 24 8) Murakami, Dennis – plaintiff's former supervisor, who plaintiff identifies  
25 as a witness to the qualifications of plaintiff and the selectee Mr. Rothberg  
26 for the nonselection claim
- 27 9-10) *Plaintiff's medical care providers Drs. Jane Thrush and Juanita Papillon.*

1 Plaintiff's list of deponents includes all of the foregoing lay witnesses listed by  
2 defendants.

3 With respect to Nos. 2, 4, 7 & 8 (Rosemarie Fernandez-Pifer, Hana Kilibarda,  
4 Kim Marlia and Dennis Murakami), in addition to the topics listed by defendants,  
5 Plaintiff believes they have knowledge of the continuing incidents of retaliation  
6 and harassment and the hostile environment for Plaintiff.

7  
8 With respect to Kim Marlia, Plaintiff believes that he will also testify to the  
9 disparate treatment of Plaintiff with respect to attendance practices and daily  
10 arrival and departure times.

11 9) Linda Cruciani - HUD Attorney with knowledge of Plaintiff's work  
12 assignments in 2004 and continuing acts of retaliation and discrimination  
13 from then until 2007

14 10) Victor Wilson - HUD employee hired and assigned specifically to monitor  
15 Plaintiff's presence and activities in the workplace with directions to  
16 report back to Plaintiff's supervisors

17 11) Sam Hutchinson - HUD Attorney with knowledge of continuing acts of  
18 retaliation and discrimination from 2004 up to 2007

19 12) Richard Thomas - similarly situated Caucasian male attorney who was  
20 treated differently with respect to attendance and commuting practices.

21 13) Naomi de la Mora - HUD Attorney with knowledge of Plaintiff's work  
22 assignments in 2004 and acts of retaliation and discrimination against  
23 Plaintiff

24 B) Written Discovery: Defendant served a set of document requests. Plaintiff has  
25 requested, and defendant has agreed, to a series of continuances on the date for  
26 responses, in deference to the parties' efforts to mediate. The plaintiff's  
27 responses are currently due on May 6, 2008.  
28



Plaintiff intends to serve written interrogatories, requests for admissions and requests for production of documents regarding the bases for her non-selection for the supervisory position, the decision to fill the position by a voluntary reassignment in lieu of the promotional process utilized for the same position in all of the other regions, the bases for the various decisions made regarding Plaintiff's work assignments, denial of teleworking requests, denial of bereavement leave, suspension of credit-hour participation, monitoring of her attendance, and criticism of her work performance, including but not limited to the issuance of a performance improvement plan.

C) Rule 35 examinations – At the December 2007 CMC, the Court indicated that the parties' request for an order permitting two examinations by independent experts in this case would be granted. Defendant has deferred the examinations pending receipt of subpoenaed medical records, completion of plaintiff's deposition and completion of the mediation process.

9. Class Actions No change from prior statement

Not applicable.

10. Related Cases No change from prior statement

None known.

11. Relief Sought No change from prior statement

Plaintiff's complaint seeks general and compensatory damages, medical expenses and related expenses, loss of earnings and earning capacity, costs of suit, attorneys fees, injunctive relief, and other relief the Court deems just and proper.

12. Settlement and ADR

The parties attended mediation on March 18, 2008. Thereafter, the parties agreed to a further mediation, and the Court extended the time for mediation. The parties and the mediator agreed on a date (April 28, 2008), but due to the recent changes in HUD, the defendant's client representative from Washington, D.C. became unavailable for that date. The parties recently set a new date for this mediation session on May 15, 2008.

13. Consent to Magistrate Judge For All Purposes No change from prior statement

The parties do not consent.

14. Other References No change from prior statement

None at this time.

15. Narrowing of Issues No change from prior statement

The motions described above may limit or narrow issues before trial.

16. Expedited Schedule No change from prior statement

None suggested.

17. Scheduling

Trial: November 17, 2008

Pretrial Conference: October 24, 2008

Dispositive motion filing deadline: June 27, 2008

Dispositive motion hearing: August 1, 2008

Fact discovery cut off: June 15, 2008

Expert disclosure and Rule 26 reports: August 8, 2008

Settlement Conference (if summary judgment denied): September 2008

The parties propose the foregoing schedule after discussion of their pre-existing trial commitments and vacation schedules.

18. Trial No change from prior statement

Defendant anticipates the trial length is 1.5 to 2 weeks. Plaintiff estimates a trial length of three to five weeks. Proposed trial date is November 17, 2008.

19. Disclosure of Non-Party Interested Entities or Persons No change from prior statement

Federal Defendant believes they are exempt from this requirement because they are federal governmental entities or federal officers. Plaintiff is not aware of any.

20. Such Other Matters As May Facilitate Just, Speedy and Inexpensive Resolution

None at this time

1 DATED: May 2, 2008

LAW OFFICES OF PAMELA Y. PRICE

2 /s/

3 PAMELA Y. PRICE

Attorneys for M. Hope Young

4 DATED: May 2, 2008

5 JOSEPH P. RUSSONIELLO

United States Attorney

6 /s/

7 JONATHAN U. LEE

Assistant United States Attorney

Attorneys for the United States of America

9  
10 **PROPOSED ORDER**

11 IT IS SO ORDERED.

12 Dated: May 2, 2008

13 Hon. Jeffrey S. White

UNITED STATES DISTRICT JUDGE